IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 173 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNIL SYNCHEM LTD. - Petitioner(s)
Versus
NABROS PHARMA PVT. LTD. - Respondent(s)

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Appearance :
MR ANIP A GANDHI for Petitioner(s) : 1
MR UDAY N VYAS for Respondent(s) : 1

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/04/2006

ORAL JUDGMENT

1. Heard Mr. Anip Gandhi, learned counsel for the petitioner. Mr. Uday N. Vyas, learned counsel for the respondent. Parties are heard.

2. Present is a petition under Sections 433, 434 and 439 of the Companies Act, 1956. According to the petitioner, respondent company, which is obliged and duty bound to make payment of Rs.98,492/- under the invoice, have failed to make payment for no good cause and as they have lost their substratum and are unable to discharge the debts, the company be wound up. It is submitted that a statutory notice was sent on 2.6.2001, and in reply to the same, false and manufactured reply was sent by the respondent on 27.6.2001.

3. The respondent, in their reply had submitted that particular consignment was received by them, but the goods being sub-standard were sent back to yet another office of the petitioner. Mr. Gandhi submitted that the goods were to be sent back in an air conditioned van and as the goods were not so sent, the petitioner has suffered loss to the extent of the value of the consignment.

4. Taking into consideration the nature of the claim and defence raised by the respondent, I am of the considered opinion that the present is not a fit case for exercising jurisdiction under Sections 433/434 of the Companies Act. The petition is dismissed. However, the petitioner would be free to take appropriate action

in accordance with law. Notice is discharged. Interim relief, if any, stands vacated.

[R.S. GARG, J.]

pirzada/-